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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT - 4 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

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Interconnection and Resale Obligations

Pertaining to

Local Exchange Carrier Provision of

Commercial Mobile Radio Services

CC Docket No. 94-54

**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments with respect to the Third Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

Contemporaneously with its decision to expand its manual roaming rule for cellular licensees to PCS and covered SMR providers, the Commission has sought comment on whether it should obligate these carriers to enter into "automatic" roaming agreements with one another. For several reasons, the adoption of an automatic roaming rule would be inconsistent with the statutorily-grounded policy of permitting market forces to shape the development of the wireless industry. The vast majority of commenters to date, both PCS and cellular carriers, believe that no automatic roaming rule is necessary because CMRS providers will have a strong incentive to enter into automatic roaming agreements with one another in order to increase their traffic volume and provide better service to their customers.

<sup>1/</sup> Interconnection and Resale Obligations Pertaining to Local Exchange Carrier Provision of Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 96-284 (rel. Aug. 15, 1996) ("Second Report and Order" or "Third Notice").

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On the other hand, the few proponents of an automatic roaming rule are asking the Commission to establish an elaborate, administratively burdensome regulatory framework to remedy a problem that appears to be only hypothetical.

Where there is no automatic roaming agreement, because of technical issues or the inability of the parties to reach mutually acceptable terms and conditions, manual roaming will enable customers of one CMRS provider to obtain service on other systems compatible with the customer's handset. In either case, the statutory goal of promoting ubiquitous and competitive wireless services will be fulfilled. At a minimum, the Commission's automatic roaming proposal is premature until there has been an opportunity to assess the benefits of the expanded manual roaming requirement.

If the Commission nonetheless decides to impose an automatic roaming requirement, it should make clear that such a requirement does not technically constrain a CMRS provider. Providers should be under no obligation to configure their systems to accommodate roaming requests, or to delay or alter technological modifications because of the effect of such modifications on roaming agreements. Such modifications should be presumed to be legitimate, with the burden on the complaining carrier to prove otherwise. A CMRS provider should also be able to establish terms and conditions in each roaming agreement that reflect the particular benefits conferred by the agreement, especially in the cases of affiliates and carriers proposing reciprocal agreements. Additionally, a CMRS provider should not be required to enter into, and should be allowed to cancel, a roaming agreement with any other carrier if the provider is not satisfied with the arrangements proposed for protecting against fraud. Finally, a CMRS provider should not be required to offer roaming agreements to resellers. In light of the Commission's recent decision to extend

CMRS providers' resale obligations for five years, resellers can obtain service on a facilities-based provider's network. Like the resale requirement, any automatic roaming requirement should sunset no later than five years after the initial licenses are awarded for the last group of broadband PCS licenses.

**I. REQUIRING CMRS PROVIDERS TO OFFER "AUTOMATIC" ROAMING IS UNNECESSARY AND WOULD IMPOSE SUBSTANTIAL BURDENS ON CARRIERS**

In this proceeding, the Commission has extended the manual roaming requirement<sup>2/</sup> to all cellular, broadband personal communications services ("PCS"), and certain specialized mobile radio ("covered SMR") carriers.<sup>3/</sup> Even before the effect of this requirement can be assessed, the Commission seeks comment on whether it should further expand CMRS providers' roaming obligations to include the provision of "automatic" roaming.<sup>4/</sup>

**A. An Automatic Roaming Requirement is Unnecessary**

There is no need for the Commission to expand its existing rule to require automatic roaming. Automatic roaming has never been federally mandated,<sup>5/</sup> yet agreements among cellular providers are widespread today as a result of customer demand for such arrangements. Given the success of this industry-initiated effort, the Commission should not intervene absent compelling evidence of market failure. As the Commission acknowledges,

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<sup>2/</sup> 47 C.F.R. §22.901.

<sup>3/</sup> Second Report and Order at ¶ 12.

<sup>4/</sup> Third Notice at ¶ 2.

<sup>5/</sup> The Commission has only imposed a manual roaming obligation on cellular providers. See 47 C.F.R. § 22.901.

there simply is no indication that CMRS operators will be unable to enter into mutually beneficial agreements.<sup>6/</sup>

As the development of cellular roaming demonstrates, CMRS providers have a strong incentive to enter into reciprocal roaming agreements because they want to be able to offer roaming to their own subscribers. Even a carrier whose license holdings give it an essentially nationwide footprint will have the incentive to enter into automatic roaming agreements so that it will not lose roaming revenues from other providers' subscribers. Reaching roaming agreements is therefore generally in every CMRS provider's best interest and, as is the case with cellular today, automatic roaming agreements with new entrants will arise without government intervention.<sup>7/</sup>

The Commission has previously concluded that the CMRS market is sufficiently competitive to justify forbearance from rate and interconnection regulation.<sup>8/</sup> This determination applies equally with regard to automatic roaming. Should any particular CMRS provider decide not to reach a roaming agreement with another CMRS provider, that provider will have other options. With at least two cellular licensees in every market and the imminent entry of two or more PCS providers, a carrier has multiple parties with whom to

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<sup>6/</sup> See Third Notice at ¶ 20. Because the Commission determined that the provision of roaming is a communications service, Second Report and Order at ¶ 10, the Communications Act's prohibition on unreasonable discrimination applies. 47 U.S.C. § 202(a). Thus, an explicit automatic roaming rule is unnecessary.

<sup>7/</sup> See Letter from Kathleen Q. Abernathy, Vice President, Federal Regulatory, AirTouch Communications, to William F. Caton, Acting Secretary, FCC, CC Docket No. 94-54, at 3-4 (June 20, 1996) ("With more facilities-based cellular and PCS carriers competing for roaming revenues, it should be even easier for PCS licensees to negotiate reasonable roaming deals.")

<sup>8/</sup> See Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1463-1508 (1994).

seek automatic roaming agreements. In addition, the Commission's existing manual roaming rule provides every CMRS customer with the ability to roam in any territory as long as his or her handset is technically capable of accessing the licensee's system. Any additional benefits that may be gained by requiring automatic roaming will be greatly outweighed by the costs of imposing such a requirement and would not justify the Commission's abandonment of its market-driven, deregulatory approach to wireless telecommunications.

**B. Imposition of an Automatic Roaming Rule Would Be Harmful to Customers and Unduly Burdensome to CMRS Providers**

The Commission seeks comment on whether it should effectuate an automatic roaming rule by requiring, as a condition of license, that cellular, broadband PCS and covered SMR providers that enter into roaming agreements with certain providers make like agreements available to similarly situated providers under nondiscriminatory rates, terms, and conditions.<sup>2/</sup> This proposal is, in effect, a "most favored nation" requirement. In addition to being unnecessary, the requirement is potentially harmful to customers. Forcing a CMRS provider to enter into agreements with similarly situated providers at prescribed rates would lessen its bargaining power and prevent it from negotiating lower rates for its customers. Indeed, if a carrier knows that it could avail itself of the terms of any other automatic roaming agreement, it would have little incentive to compromise on issues such as roaming rates. This would be especially problematic in markets where carriers receive most of their revenue from roamers. The Commission should not establish a policy that makes it difficult for a CMRS provider to look out for the best interests of its subscribers.

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<sup>2/</sup> Third Notice at ¶ 22.

An automatic roaming rule would also be harmful to the CMRS industry as a whole because it has the potential to discourage network buildout and technical innovation. System compatibility is necessary for one provider's subscribers to be able to roam on another provider's system and generally providers negotiate the standards for system compatibility and the costs of upgrades in their roaming agreements. Under an automatic roaming rule, the number of agreements a provider will be required to negotiate will escalate as will the number of incompatible systems. Although the Commission states that the carrier seeking to enable its subscribers to roam on another system should bear the burden of developing and implementing any necessary technology,<sup>10/</sup> requiring providers to reach automatic roaming agreements with all similarly situated providers would encourage the use of the lowest common denominator technology, rather than encouraging innovation.

The administrative costs of an automatic roaming rule would also be excessive. Each provider would have to establish a complex billing system in order to allocate costs properly to each of the five other facilities-based competitors in each market as well as to any resellers. In addition, an automatic roaming requirement would force cellular, PCS, and SMR systems to make investments to expand capacity to supply roaming services for which the demand may be only temporary. Even if not specifically mandated, capacity would need to be increased commensurate with expected demand in order to maintain reliability of the

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<sup>10/</sup> Id. at ¶ 26.

network.<sup>11/</sup> It is likely that these costs would never be recoverable.<sup>12/</sup> Furthermore, although the Commission states that any most favored nation rule would need to recognize that not all carriers are "similarly situated,"<sup>13/</sup> the vagueness of this phrase foretells the frequent disputes that will arise and will need to be adjudicated. Finally, as the Commission acknowledges, an automatic roaming requirement might lessen competition in the wireless market by precluding carriers from differentiating themselves on the basis of their roaming services.<sup>14/</sup>

While there may be certain theoretical benefits to an automatic roaming requirement, the potential risks of such a requirement are great.<sup>15/</sup> Given the lack of demonstrated need for the rule, the Commission should follow its "general policy of allowing market forces, rather than regulation, to shape the development of wireless technologies."<sup>16/</sup>

## **II. ANY AUTOMATIC ROAMING RULE SHOULD BE NARROWLY TAILORED AND SHOULD BE PHASED OUT PROMPTLY**

If, despite the problems discussed above, the Commission chooses to adopt an automatic roaming rule, it should narrowly construe the requirement. To the extent carriers must offer all similarly situated parties the same terms, and conditions, the term "similarly

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<sup>11/</sup> See Ex Parte Submission of Economists Incorporated Regarding Wireless Roaming Services at 10-11, attached to Letter from Cathleen A. Massey, Vice President - External Affairs, AT&T Wireless Services, Inc. to William F. Caton, Acting Secretary, FCC, CC Docket No. 94-54 (Jan. 26, 1996) ("AT&T Ex Parte").

<sup>12/</sup> Id.

<sup>13/</sup> Third Notice at ¶ 22.

<sup>14/</sup> Id. at ¶ 28.

<sup>15/</sup> Id. at ¶ 27.

<sup>16/</sup> Id. at ¶ 26.

situated" should be strictly interpreted to include only those carriers who offer like benefits in exchange for roaming rights and who do not impose any additional costs on the roamed-on provider. For example, AT&T agrees with Sprint Venture that a provider should be able to offer an affiliate more favorable rates, terms, or conditions when that affiliate is part of a greater agreement that affords other benefits to the roamed-on provider.<sup>17/</sup> Likewise, a party with whom a provider reaches a "one-way" agreement should not be entitled to the same rates, terms that the provider has offered to another carrier with whom it has entered into a reciprocal agreement. As AT&T has explained, requiring equal treatment of all carriers would likely result in large subsidies to many companies.<sup>18/</sup> This is because when two wireless systems negotiate a roaming arrangement in the marketplace, the price for roaming may just be a small part of an agreement that offers numerous other benefits to the two parties. These other benefits are not necessarily present in all roaming agreements. A "non-discrimination" mandate that fails to take into account reciprocity or other relationships among the original parties would interfere with the ability of companies to enter into efficient contracts in the future, and would reduce incentives to lower rates.<sup>19/</sup>

In this regard, resellers are not "similarly situated" because they do not offer the primary carrier any benefit in return. Moreover, the extra costs and burdens would be imposed on facilities-based carriers if they are required to enter into agreements with multiple resellers simply are not warranted.<sup>20/</sup> A resale customer will always have the

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<sup>17/</sup> Id. at ¶ 23.

<sup>18/</sup> AT&T Ex Parte at 12.

<sup>19/</sup> Id.

<sup>20/</sup> Third Notice at ¶ 24.



option of roaming manually in any particular territory, and resale carriers may enter into agreements with their underlying facilities-based carriers to supply roaming services to their customers.<sup>21/</sup>

The Commission should also ensure that carriers have the option to terminate or suspend roaming agreements in the event that the risk of fraud to the home carrier becomes unacceptable.<sup>22/</sup> In addition, CMRS providers should be able to preclude their customers from roaming automatically on other systems if they determine that the roamed-on carrier is charging excessive rates. If home carriers are denied this flexibility, the potential for unrecovered fraud will rise to unacceptable levels. Moreover, in order to preserve good relations with their customers, home carriers may have to cover the difference between "reasonable" rates and the rates charged by the roamed-on carrier. Both of these consequences would be unnecessary and unfair.

If the Commission decides to adopt an automatic roaming rule, it should sunset it, at the very latest, five years after it awards the last group of initial licenses for currently allocated broadband PCS spectrum.<sup>23/</sup> Because there have been no demonstrated abuses with regard to roaming, however, AT&T suggests that the Commission decline to impose

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<sup>21/</sup> AT&T Ex Parte at 2. Indeed, the resellers of AT&T's cellular services are able to avail themselves of the automatic roaming agreements AT&T has entered into with other carriers.

<sup>22/</sup> Third Notice at ¶ 30. New section 222 of the Communications Act permits carriers to use customer proprietary network information ("CPNI") to protect themselves from fraud. 47 U.S.C. § 222(d)(2). This section was added "to allow carriers to use CPNI in a limited fashion for credit evaluation to protect themselves from fraudulent operators who subscribe to telecommunications services, run up large bills, and then change carriers without payment." H.R. Rep. No. 104-458, at 205 (1996). Thus, there is no conflict between the statute and the need for carriers to exchange customer-specific information to prevent fraud.

<sup>23/</sup> Third Notice at ¶ 32. AT&T agrees that the manual roaming rule should be sunset under this same five-year timeframe. Id.

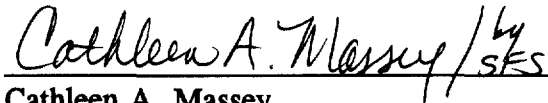
any regulations until it has the opportunity to assess the effectiveness of its manual roaming rule and the marketplace itself.

### CONCLUSION

For the foregoing reasons and as more fully set forth above, the Commission should not adopt an automatic roaming rule for CMRS providers.

Respectfully submitted,

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October 4, 1996

**CERTIFICATE OF SERVICE**

I, Tanya Butler, do hereby certify that on this 4th day of October, 1996, I caused a copy of the foregoing "Comments of AT&T Wireless Services, Inc." to be delivered by messenger (\*) or first class mail to the following:

  
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